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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 924

ROBERT H. REDDICK,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals of Maryland appears in full on pages 21-24 of the Appendix to the Petition for for Writ of Certiorari, and is also reported in 219 Md. 95, 148 A. 2d 385.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on February 16, 1959, but Respondent denies that jurisdiction is founded under 28 U.S.C.A., Section 2101(d), or under Rule 19(1)(b) of this Court, as alleged by Petitioner.

QUESTIONS PRESENTED

It is believed by the Respondent that the following questions clarify the vague and inaccurate questions presented by the Petitioner:

1. Was the indictment legally sufficient to charge Petitioner with a crime?

2. Was the Petitioner entitled to an order of restoration of property pursuant to Article 27, Section 551, Annotated Code of Maryland (1957 Ed.), which property was seized under a valid search and seizure warrant in another and unrelated proceeding?

3. Was the Petitioner denied a fair and speedy trial?

STATUTES INVOLVED

Pertinent statutes are set forth in the Petition for Writ of Certiorari.

STATEMENT

The Petitioner formerly held the office of Secretary-Treasurer of the Board of Medical Examiners, representing the Maryland State Homeopathic Medical Society, which, prior to June 1, 1957, was authorized and empowered to license qualified persons to practice medicine and surgery. However, prior to the time alleged in the indictment, the Petitioner had resigned from his position as a member of the Board of Medical Examiners, representing the Maryland State Homeopathic Medical Society, aforementioned, and subsequently, by decree of the Circuit Court of Baltimore City, dated August 13, 1956, the Petitioner was permanently enjoined and restrained from conducting examinations and issuing licenses for the practice of medicine and surgery, and also was enjoined and restrained from acting

on behalf of the aforesaid Board. That decree was affirmed by the Court of Appeals of Maryland on April 9, 1957 (Motion for Reargument was denied on May 9, 1957). See *Reddick v. State*, 213 Md. 18, 130 A. 2d 762. A Petition for a Writ of Certiorari was denied by this Court on October 14, 1957. 355 U.S. 832, 2 L. Ed. 2d 44, 78 S. Ct. 50.

Notwithstanding the issuance of the aforementioned injunction, the evidence in the instant case clearly established that the Petitioner issued a license to practice medicine and surgery in October, 1957, to one Joseph Biscardi, a retired automobile mechanic, who had previously been convicted of practicing medicine without a license, which fact was known by the Petitioner. A consideration of $5,000 was paid by Biscardi to the Petitioner for this license. The certificate of licensure, in proper statutory form (Article 43, Section 126, Annotated Code of Maryland (1957 Ed.)), bore the facsimile seal of the State of Maryland and also bore the imprinted seal of the Society, and was dated December 27, 1955. The certificate further falsely recited that on the 7th day of December, 1955, Biscardi had offered satisfactory proof of his educational qualifications and that he had taken an examination and was found to be proficient and qualified to practice medicine and surgery. The spurious certificate was signed by the Petitioner as Secretary and by one Robert D. Brown, M.D., as President (in fact, during December, 1955, Dr. Julius Chepko was the President of the Board of Medical Examiners representing the Homeopathic Medical Society).

A jury under Judge Anselm Sodaro, sitting in the Criminal Court of Baltimore, returned a general verdict of guilty upon a ten-count indictment charging forging and uttering and attempting to forge and utter a license to practice medicine and surgery in the State of Maryland,

and of unlawfully affixing and making use of a public seal of the State. Thereafter, the Petitioner filed a motion for a new trial to the Supreme Bench of Baltimore City, which motion was denied. Petitioner was sentenced to incarceration in the Maryland Penitentiary for a term of five years, which judgment was affirmed by the Court of Appeals of Maryland.

ARGUMENT

This case represents one of the boldest attempts to defraud the people of the State of Maryland by a scheme to issue licenses to practice medicine and surgery to unqualified persons. The subject matter was presented to the Circuit Court of Baltimore City, after which the Petitioner was enjoined from engaging further in his illegal activities and, notwithstanding said injunction, the Petitioner continued to issue licenses to unqualified persons without examination and in return for large sums of money.

The Petitioner presents limited issues for consideration, and it is obvious that a review on certiorari by this Court is neither necessary, desirable nor warranted. There was no Federal question raised in the trial court, and the record clearly shows that no constitutional right of the Petitioner has been infringed upon. The Petitioner has attempted to mislead this Court by misstating the points involved and in a vague way has seemed to endeavor to raise Federal grounds which were not raised in the State court and which are not properly raised in this Court. The decision of the Court of Appeals of Maryland is so clearly correct and the protection afforded to the Petitioner's rights so broad in Maryland that no question warranting decision by this Court is presented.

I.

THE INDICTMENT WAS LEGALLY SUFFICIENT TO CHARGE PETITIONER WITH A CRIME.

The Petitioner was charged with the offense of forging and uttering a license to practice medicine and surgery, which the Court of Appeals of Maryland found has been recognized from early times as an offense at common law. See *Arnold v. Cost*, 3 G. & J. 219; 2 Wharton's *Criminal Law and Procedure* (Anderson's Edition, 621); and Clark & Marshall, *Crimes*, 5th Ed., Section 398. Even where a statute has been enacted specifically covering forgery, the common law offense has been held to be applicable where the statute was not intended to cover the whole field or repeal the common law. See Clark & Marshall, *supra*, Section 14; Joyce, *Indictments*, Section 14; and *Lutz v. State*, 167 Md. 12, 15.

Notwithstanding the fact that the indictment charged a crime, the Petition for Writ of Certiorari does not present any Federal question since the question of the sufficiency of indictments is a matter for interpretation by State courts and not by this Court. *Edelman v. California*, 344 U.S. 357, 97 L. Ed. 387, 73 S. Ct. 293.

The Petitioner further contends that the evidence was legally insufficient to support the verdict. The crux of this argument is that the certificate signed and issued by the Petitioner was void on its face and, therefore, could not possibly deceive anyone. The fact that it was falsely antedated gave color to its apparent authenticity. However, the point was not properly raised in the lower court because the Petitioner failed to renew his motion for a directed verdict at the end of the entire case after he had offered evidence, and the Court of Appeals was, therefore,

precluded from reviewing the sufficiency of the evidence under Rule 738-a of the Maryland Rules of Practice and Procedure.

II.

THE PETITIONER WAS NOT ENTITLED TO AN ORDER OF RESTORATION OF PROPERTY PURSUANT TO ARTICLE 27, SECTION 551, ANNOTATED CODE OF MARYLAND (1957 ED.), WHICH PROPERTY WAS SEIZED UNDER A VALID SEARCH AND SEIZURE WARRANT IN ANOTHER AND UNRELATED PROCEEDING.

The Respondent takes serious issue with the statement of the Petitioner that, *admittedly*, the documents seized under a search and seizure warrant, issued by a judge of the Supreme Bench of Baltimore City on April 26, 1957, were seized illegally. The documents seized pursuant to a validly issued search and seizure warrant were not connected with the offense charged in the indictment on the cause before this Court, but were seized some six months prior to the commission of this offense and grew out of another, separate and unrelated offense of which the Petitioner had been duly charged. None of the documents seized under the search and seizure warrant was used or attempted to be used as evidence at the trial of this case. In addition thereto, counsel representing the Petitioner in the lower court had complete access to the documents held by the State, if he had desired to use them in defense of the Petitioner in this proceeding. The record clearly shows that neither the Petitioner nor his counsel took advantage of the opportunity to review or to use the seized documents in Petitioner's defense.

In view of the fact that the seized documents had no connection with the offense charged in this cause a copy of the search warrant was not a part of the record of this proceeding and there was no proper test of the validity of the search warrant in this case. The Petitioner filed in

the trial court a motion for restoration of these documents, pursuant to the provisions of Article 27, Section 551, Annotated Code of Maryland (1957 Ed.). In said petition, the Petitioner did not allege that the documents were seized as a result of an unlawful and unconstitutional search and seizure, but merely that there was no probable cause for the issuance of said search and seizure warrant by a judge of the Criminal Court of Baltimore. In the lower court and in the Court of Appeals of Maryland, the Petitioner did not claim that his constitutional rights under the Fourth Amendment were violated, and this issue has been raised for the first time in this Court. The Petitioner has cited no authority to show that the State court did not have the power and authority to issue the search and seizure warrant involved. The Court of Appeals of Maryland, in its opinion, found no merit to the contention that the documents seized long prior to the indictment and prior to the offense charged deprived the Petitioner of any constitutional or statutory right.

It is obvious that no substantial Federal question has been raised.

III.

THE PETITIONER WAS NOT DENIED A FAIR AND SPEEDY TRIAL.

The Petitioner contends that he was deprived of his constitutional right to a fair and speedy trial. The docket entries reveal that the Petitioner was indicted on January 10, 1958, and that a hearing on the merits was begun on April 21, 1958. During the interim period Petitioner filed several motions to dismiss the indictment and for restoration of property seized under a search and seizure warrant in another proceeding. These preliminary motions were finally disposed of on March 24, 1958. There was no request

or demand on the part of the Petitioner for an early trial date. In the absence of such a demand, there can be no possible error. See *Harris v. State*, 194 Md. 288. In addition, the question was not raised in the trial court and was raised for the first time on appeal to the Court of Appeals of Maryland. The Petitioner has vaguely inferred to this Court that he was held in legal custody for a long period of time pending the finding of an indictment by the Grand Jury. This is not true. The case was promptly heard after the finding of an indictment by the Grand Jury, even though the Petitioner attempted by many devious means to delay trial of the case.

CONCLUSION

The Respondent respectfully submits that an examination of Petitioner's arguments and the position which he takes indicate that there is no substantial Federal question involved, and further that the decision below turns upon matters solely within the province of the State courts and, therefore, this case should not be reviewed by this Court. For the reasons heretofore assigned, the Petition filed to this Honorable Court for the issuance of a writ of certiorari should be denied.

Respectfully submitted,

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